

Exhibit M – Transcript of Oct. 27, 2010 Hearing (Excerpt)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555 (JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

October 27, 2010
10:07 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

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2 HEARING re Debtors' Twenty-Eighth Omnibus Objection to Claims
3 (Valued Derivative Claims)

4

5 HEARING re Debtors' Thirty-Fifth Omnibus Objection to Claims
6 (Valued Derivative Claims)

7

8 HEARING re Debtors' Thirty-Sixth Omnibus Objection to Claims
9 (Failure to Submit Guarantee Questionnaire Claims)

10

11 HEARING re Debtors' Thirty-Seventh Omnibus Objection to Claims
12 (No Liability Claims)

13

14 HEARING re Debtors' Thirty-Eighth Omnibus Objection to Claims
15 (Amended and Superseded Claims)

16

17 HEARING re Debtors' Fortieth Omnibus Objection to Claims (Late-
18 Filed Claims)

19

20 HEARING re Debtors' Forty-First Omnibus Objection to Claims
21 (Late-Filed Claims)

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23 HEARING re Debtors' Forty-Second Omnibus Objection to Claims
24 (Late-Filed Lehman Programs Securities Claims)

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HEARING re Debtors' Forty-Third Omnibus Objection to Claims
(Late-Filed Lehman Programs Securities Claims)

HEARING re Debtors' Forty-Fourth Omnibus Objection to Claims
(Settled Derivative Claims)

HEARING re Debtors' Twenty-Ninth Omnibus Objection to Claims
(No Blocking Number LPS Claims)

HEARING re Debtors' Thirty-Ninth Omnibus Objection to Claims
(Duplicative Claims)

HEARING re Debtors' Objection to Proofs of Claim Filed By
William Kuntz III (Claim Nos. 33550, 33551, 33552, 35121, and
35430)

Transcribed by: Lisa Bar-Leib

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1 allow claims that were settled pursuant to assigned termination
2 agreements. These claims were where parties had reached an
3 agreement with the debtors with respect to the claim amount of
4 classification that is not reflected on the group of claims.
5 And omnibus objection is simply seeking to modify those claims
6 to conform to the parties' agreement. Therefore, the debtors
7 respectfully request that the Court grant omnibus objection 44.

8 THE COURT: Omnibus objection 44 is granted.

9 MS. ECKOLS: Your Honor, that wraps up the uncontested
10 claims matters. And moving on to the contested claim matters,
11 agenda item number 11 which is some carryover items from
12 debtors' twenty-ninth omnibus objection to claims.

13 As Your Honor may recall, omnibus objection 29 sought
14 to disallow and expunge Lehman program securities claims that
15 violated the bar date order because they did not include the
16 required blocking number. At the September 1 claims hearing,
17 Your Honor granted the omnibus objection with respect to the
18 uncontested claims and today we are taking up the three
19 contested claims.

20 The responses or the parties contesting are RBC
21 Capital Markets, the August '86 Trust and Aspecta Assurances
22 International. Each of these respondents failed to include the
23 required blocking number with their proof of claim and thus
24 violated the bar date order. The debtors ask that this Court
25 enforce the blocking number requirement uniformly and expunge

1 the noncompliant claims.

2 The blocking number requirement is critical and needs
3 to be enforced in order for debtors to effectively reconcile
4 the Lehman program securities claims. The bar date order
5 established specific procedures for the filing of those claims
6 because of the unique characteristic of those securities.
7 Specifically, the program securities did not have an indenture
8 trustee that could file a global claim on behalf of the
9 individual holders of those securities. So the individual
10 holders would have to file their own claims.

11 This presented serious issues as far as reconciliation
12 of the claims because the debtors would not be able to confirm
13 ownership or amount of a particular security. A security could
14 have been traded every day for thirty days prior to the bar
15 date and each holder could have filed the claim risking
16 duplicative and/or excessive distributions. The blocking
17 number requirement was specifically designed to address this
18 problem. The blocking number, when issued, would confirm
19 ownership and amount of a security as of a certain date and,
20 once it was issued, trading for that particular security was
21 frozen through the securities program bar date. The blocking
22 number requirement was two part. A claimant had to actually
23 obtain the blocking number and then include it with their
24 timely filed proof of claim. That again, the blocking number
25 plays a critical role for reconciliation of these claims and

1 significantly reduces the burden on debtors of reconciling
2 these claims.

3 THE COURT: Can I break in for a minute --

4 MS. ECKOLS: Sure.

5 THE COURT: -- and just ask a very basic question
6 about how one obtains blocking numbers. Let's just say that
7 you're the August '86 Trust to pick one that happens to be up
8 today. And you're trying to comply faithfully with the
9 requirements of the order establishing procedures for filing
10 proofs of claim. And you know that there is a need to obtain a
11 blocking number. Procedurally, how would you go about doing
12 that?

13 MS. ECKOLS: Your Honor, the claimant would need to
14 reach out to the applicable clearing agency, Euroclear or
15 Clearstream, and they would issue the blocking number for the
16 claimant.

17 THE COURT: And once that blocking number is issued,
18 that becomes, in effect, the tracking number for the claim?

19 MS. ECKOLS: Yes, Your Honor. That is correct.

20 THE COURT: Okay.

21 MS. ECKOLS: Allowing parties to circumvent the
22 blocking number requirement eviscerates the benefits that it
23 was intended to have and will make it incredibly difficult, if
24 not impossible, for the debtors to reconcile those claims. And
25 there are a large number of Lehman program securities claims to

1 reconcile. There are over approximately 31,000 Lehman program
2 securities claims which is almost half of the amount of claims
3 in total filed in these Chapter 11 cases. Again, debtors
4 believe that the blocking requirement must be uniformly and
5 strictly enforced.

6 The blocking number requirement was expressly set
7 forth in the bar date order. It specifically stated that
8 claimants had to obtain the blocking number and include it on
9 their proof of claim. This requirement was also specifically
10 set forth in the securities program bar date notice and, in
11 fact, that bar date notice had a whole section that said
12 "special note regarding blocking numbers". That was in bold.
13 And that was on the court-approved bar date notice.

14 The proof of claim form that this Court approved for
15 Lehman program securities claim also expressly said that the
16 claimant had to obtain had to obtain the blocking number and
17 had a space for them to put it on there. The bar date notice
18 was widely disseminated. It was given to the clearing agencies
19 and it was also published in twenty-six papers in eighteen
20 countries, ten languages plus seven local dialects.

21 Now the respondents do not dispute that they failed to
22 comply with one or both parts of the blocking number
23 requirement. And the responses do not dispute that they
24 received notice of the blocking number requirement or that
25 notice was somehow deficient. The responses do not dispute

1 that the requirement to obtain the blocking number and put it
2 on the proof of claims was clear. Instead, the responses
3 assert that they should be treated differently from other
4 Lehman program securities claimants that had to comply with the
5 bar date order's procedures.

6 Now I did want to alert Your Honor to the fact that
7 the August '86 Trust did file an affidavit on Monday afternoon
8 that did, for the first time, assert that they had no notice of
9 this requirement and that they didn't receive proper notice of
10 it. So it appears as though the August '86 Trust in response
11 to debtors' reply has changed position a little bit. Again,
12 debtors just wanted to notify the Court of this. We believe it
13 is an impermissible surreply but we did want you to know that
14 August '86 Trust was raising this now kind of belatedly.

15 The reasons provided by each respondent are vague and
16 unsubstantiated. They cite a mistake or inadvertence of some
17 sort. But whatever the excuse, the respondents all seek to
18 justify their noncompliance with a no harm no foul argument
19 that doesn't withstand scrutiny.

20 Specifically, with respect to Aspecta. Aspecta failed
21 to obtain a blocking number altogether but claims no harm no
22 foul because it says it held the securities "at all relevant
23 times". There is no explanation of what "all relevant times"
24 actually means and no support other than two unsubstantiated
25 documents that purport to establish ownership of the securities

1 as of September 2010 which, obviously, is nearly a year after
2 the applicable bar date. So even if Aspecta had produced
3 admissible evidence establishing ownership of the securities as
4 of September 2010, which it did not, this does not accomplish
5 the goals of the blocking number requirement or render the
6 blocking number unnecessary. It does not confirm ownership
7 prior to bar date. It does not prevent others from claiming
8 those same securities. And so, the reconciliation issues that
9 the blocking number requirement specifically sought to avoid
10 are present here. Because Aspecta utterly failed to comply
11 with the blocking number procedures, its claim should be
12 expunged.

13 The no harm no foul arguments asserted by RBC and the
14 August '86 Trust simply miss the point. RBC and the August '86
15 Trust assert that the failure to include a blocking number with
16 their claim should be excused because they have the number and
17 simply didn't give it to the debtors. However, the blocking
18 number requirement is two-fold. The claimant had to obtain the
19 blocking number and actually put it on their timely filed proof
20 of claim. Obtaining a blocking number but not providing it to
21 the debtors does not allow the debtors to effectively process
22 and reconcile these 31,000 program securities claims.

23 Moreover, the harm to the debtors in making exceptions
24 to the blocking number requirement, whether because the
25 claimant forgot to include it with their proof of claim or

1 simply did not obtain one, the harm is that it encourages other
2 claimants to come and seek similar exceptions. The debtors
3 implemented the blocking number procedures because it knew that
4 the volume of the Lehman program securities claims was going to
5 be large and the reconciliation was going to be difficult. The
6 blocking number was designed to avoid a parade of claimants
7 seeking to engage in contested hearings, possible lengthy
8 evidentiary hearings, regarding whether or not they are the
9 valid holder as a Lehman program securities claim. In short,
10 the contested hearing that debtors are engaging in right now
11 with the possibility of hundreds more to follow if leniency is
12 granted demonstrates the harm to the debtors and is precisely
13 why the blocking number requirement should be strictly
14 enforced.

15 THE COURT: Can I break in and ask you a question --

16 MS. ECKOLS: Of course.

17 THE COURT: -- about that? My understanding of how
18 this works procedurally is that the blocking number is to be
19 included on the filed claim and it's used by those who are
20 processing claims for the debtor in determining how to allow
21 claims based upon Lehman program securities. Assuming that a
22 claimant has obtained a blocking number and fails for whatever
23 reason to include that number on the documents that are being
24 processed but later cures that defect by providing what I'll
25 call an amended claim saying I'm sorry, I forgot, how is the

1 debtor prejudiced if at all?

2 MS. ECKOLS: Your Honor, it's really the slippery
3 slope problem and the encouraging other parties who did not,
4 for whatever reason, comply with the blocking number
5 requirement to come in and seek exceptions.

6 THE COURT: Yes. But if the party who was seeking the
7 exception has a blocking number that doesn't create an
8 exception for a party that failed to obtain a blocking number,
9 does it?

10 MR. WAISMAN: If I may, Your Honor. And this is the
11 reason we -- Your Honor's very question is the reason that we
12 are here on this objection and discussing it with the Court.
13 The internal fear and concern is that if we are to say to those
14 folks that call and say I actually complied. I called my
15 broker or Euroclear or Clearstream obtaining my blocking
16 number. I just forgot to include it. Here it is, no harm no
17 foul. The concern is if we allow those in, we're then going to
18 have the next variation, of which we're hearing about already
19 which is, look, I didn't get the blocking number but I will
20 provide an affidavit and a witness in court saying I held it in
21 the years before the bar date, at the bar date, I still hold it
22 today. So, in essence, you're blocking number requirement is
23 met, no harm no foul. And we start to go down this slope where
24 the magnitude of the claims here, 30,000 -- approximately
25 30,000 people got notice, understood the notice complied.

1 There's obviously, as with the entirety of this bar date
2 process, a large number of claimants that didn't comply. And
3 if we made exception now, we are concerned that we are just
4 allowing additional variations on the exception that are going
5 to bog us down in the claims reconciliation process at this
6 late date with a plan on file and bog down the process here in
7 court with a magnitude of claims that have not yet really been
8 seen in the Chapter 11 cases. So that's -- those are the
9 reasons we are pressing the objections.

10 THE COURT: Okay.

11 MS. ECKOLS: Your Honor, just in conclusion, the
12 debtors believe that the blocking number requirement -- clear
13 notice was given. These respondents didn't comply and
14 respectfully request that the Court overrule the responses and
15 grant the twenty-ninth omnibus objection as to the RBC, the
16 August '86 Trust and the Aspecta claims.

17 THE COURT: Okay. I see counsel in the room so I'll
18 hear what they have to say. Mr. Friedman, you're number one.

19 MR. FRIEDMAN: Thank you, Your Honor. Jeff Friedman
20 of KattenMuchinRosenman for RBC Capital Markets, Your Honor.
21 According to what Ms. Eckols just said, the crux of the matter
22 this morning is whether the bar date should be strictly and
23 rigidly enforced based on a slippery slope argument that RBC is
24 allowed to amend its claim and add a blocking number that it
25 timely and properly obtained but merely failed to write down on

1 the proof of claim form, everyone will want to use that excuse.

2 I don't know what the magnitude of claims are that fit
3 into that category. I do know that this omnibus objection
4 before the Court, the twenty-ninth omnibus objection, objected
5 to eleven claims apparently, a number of which didn't obtain
6 blocking numbers.

7 It seems to me, Your Honor, that the issue is not
8 simply the rigid enforcement of the Court's order. Every Court
9 that enters a bar date order, Your Honor -- it's not only in
10 this case; it's in other cases -- other judges in this court,
11 bankruptcy judges generally expect their bar date orders will
12 be complied with. And the penalty for doing so, particularly
13 if you're late, that your claim may be disallowed in its
14 entirety. But it seems to me, Your Honor, that the issue
15 really is whether, in Lehman's case, decades of jurisprudence
16 regarding amendments to claims, informal proofs of claims, will
17 simply not apply in the Lehman case no matter how insignificant
18 the harm is to Lehman. This is, in my view, the most
19 hypertechnical objection because Lehman has known since we were
20 put on notice that we had a blocking number, it was timely
21 obtained. So that if they went to Euroclear and said, send us
22 a list of blocking numbers you have for the bonds, they'd know
23 that RBC obtained its blocking number for these bonds. And I
24 don't know whether they've done that or not. But it would be
25 surprising if there was not a double check against sort of

1 Euroclear and Clearstream's master list of blocking numbers. I
2 don't know how they're doing this but it would be somewhat
3 odd --

4 THE COURT: Well, let me just ask you something
5 because I don't know how this procedure would ordinarily work.
6 Are you saying that the blocking number requirement is
7 effectively a redundancy because any complying creditor who has
8 obtained a blocking number can have that number reproduced
9 through the clearing systems by simply requesting a download?
10 Are you saying that as a matter of fact or is that just surmise
11 on your part?

12 MR. FRIEDMAN: I'm not suggesting that we could have
13 done it. I would be somewhat surprised if Lehman, given the
14 nature of what they're doing here, couldn't have done it. I
15 mean, this whole blocking number system was set up for this
16 procedure. Now maybe Euroclear has said to Lehman well, we're
17 not telling you who we assigned particular blocking numbers to
18 and what they're claim is. But clearly, Euroclear's got our
19 blocking number assigned to RBC for at least 300,000 dollars
20 worth of bonds with this ISIN number. The proof of claim that
21 RBC filed, and it's attached to our response, used the wrong
22 claim form. I mean, we represent RBC generally in this case
23 and we filed and helped them file a number of properly
24 completed program securities. RBC is a fairly far flung
25 organization. For some reason that no one can really explain,

1 this claim came through their Minneapolis office, didn't go to
2 the attorneys in New York or Toronto for RBC and there was a
3 guy in RBC's office in Minneapolis that took his best shot. He
4 had gotten information from the Bank of New York. That
5 information had the blocking number on it. It had the
6 Euroclear account number on it. He wrote the Euroclear account
7 number on the proof of claim. But because he was using the
8 regular Lehman proof of claim and not the program securities
9 claim, there was no blank that said insert your blocking number
10 here that would have tipped him off. He just didn't know.

11 Now I'm not claiming that we didn't get notice. We
12 actually got direct notice. I'm not even saying this was a
13 publication notice issue. This was a screw-up. And the
14 question is, is this screw-up so bad that it's not subject to
15 being amended. Because we do think in this case that the harm
16 to Lehman is negligible. Again, I don't know how many claims
17 are going to fit in this. But the slippery slope argument
18 probably isn't all that significant for people who actually
19 timely got blocking numbers and didn't include them. I mean,
20 had we included the blocking number but transposed two digits
21 also fatal because it's not the blocking number; it's a
22 different number. I mean, I don't know where you draw the
23 line, Your Honor. But it just seems to me that whether you use
24 an informal proof of claim which is simply intended to put the
25 debtor on notice that a particular claimant seeks to hold the

1 debtor and the estate liable with respect to a particular
2 obligation has been satisfied in spades here.

3 On a scale of one to ten of the most aggressive
4 amendments you might make, this is a 1. This is such a minor
5 change. I mean, as the Seventh Circuit said in the Stoecker
6 case, if I may briefly quote it, "If a documentation is
7 missing, the creditor cannot rest on the proof of claim. It
8 does not follow, however, that he is forever barred from
9 establishing the claim. Nothing in the principles or
10 practicalities of bankruptcy or in the language of any rule or
11 statute justifies so disproportionate a sanction for a harmless
12 error. A creditor should therefore be allowed to amend his
13 incomplete proof of claim to comply with the requirements of
14 3001 provided that other creditors are not harmed by the
15 belated completion of the filing."

16 In fact, Your Honor, with respect to the data required
17 by 3001, this claim meets that in its entirety. It is only
18 this Court's additional requirement as requested by Lehman that
19 a blocking number be obtained and be put on the proof of claim
20 that's lacking here. And it's only that second part because we
21 did timely obtain the blocking number.

22 So, Your Honor, we think that this satisfies the
23 claim. We have filed an amended claim. We think that that
24 claim satisfies it. We don't think there's been real harm to
25 Lehman here because there's certainly been no distributions.

1 They're still in the reconciliation process. They have had
2 our blocking number since we filed our response a couple of
3 months ago. And we just think that, on these facts, the Court
4 should allow the amended claim to stand.

5 THE COURT: Okay. Thank you.

6 MS. VICTOR: Good morning, Your Honor. Kim Victor
7 from Thaler & Gertler representing the creditor, the August '86
8 Trust. I also concur with the arguments that were just made.
9 My client timely filed its proof of claim, signed, fully
10 completed it, put in a broker's number, the brokerage number,
11 the Barclay brokerage number rather than the blocking number.
12 It was clearly just a misunderstanding. All the information
13 was filled out, twenty-four pages were connected to the proof
14 of claim that sufficiently the nature of the claim for the
15 debtor. Once the debtor had advised that the blocking number
16 was not included in the proof of claim, the creditor provided
17 it debtors' counsel. We have also amended the original timely
18 filed proof of claim which corrects any defects as to form to
19 the original timely filed claim.

20 The point is that there is absolutely no harm to the
21 debtor in this case. The debtor had sufficient knowledge of
22 the claim. They don't put anywhere in their papers that they
23 were unable to identify the nature of the claim, that they
24 weren't given notice, properly timely filed notice of the
25 claim. In this case, it's the creditor who stands to

1 completely lose a valid claim of 450,000 dollars. At this
2 time, Your Honor, we ask that the amendment that has been
3 attached to our responsive papers be included as a timely filed
4 proof of claim as amended.

5 THE COURT: Just a question about the affidavit of
6 Joseph Kelly. What am I supposed to do with that? And how
7 does that affidavit which was filed on Monday impact the
8 argument you've just made?

9 MS. VICTOR: It doesn't really, Your Honor. It
10 doesn't really. It's just proof that there is a blocking
11 number, that the blocking number was provided, that now the
12 debtor is able to track the claim and that any amendment to the
13 original claim is purely just to include that blocking number.
14 There will be no changes to the original claim. So there is no
15 prejudice to the debtor in this case. It was merely just a
16 misunderstanding as far as the number was concerned.

17 THE COURT: Okay.

18 MS. HEER: Good morning, Your Honor. Patricia Heer
19 Piskorski of Duane Morris on behalf of Aspecta Assurance
20 International Luxembourg. Your Honor, Aspecta has filed a
21 proof of claim timely and it provided sufficient documentation
22 to sufficiently identify the notes at issue in that proof of
23 claim.

24 THE COURT: Can I stop you for a second now because if
25 I'm understanding the position of Aspecta which is a little bit

1 different from the position of RBC and the August '86 Trust.
2 It's that even though you didn't obtain and disclose on your
3 form a blocking number that that shouldn't matter because
4 you've demonstrated that you always held the securities that
5 are the subject to the proof of claim, is that right?

6 MS. HEER: Your Honor, we have attached documentation
7 to the response to the objection seeking to disallow the claim
8 which does give proof that at the time of the proof of claim
9 those notes at issue in the proof of claim were held and owned
10 and have continued to be held by Aspecta.

11 THE COURT: Yes. But it's true that Aspecta did not
12 obtain a blocking number and didn't include a blocking number
13 on its proof of claim.

14 MS. HEER: That's correct, Your Honor. And it did
15 not. And it does understand the requirements of the bar
16 date -- the program securities bar date order and the terms
17 thereof. And the argument is set forth in the motion and there
18 is the documentation provided in there. And we do thank you,
19 Your Honor, for considering it.

20 THE COURT: Okay. Is there any response from the
21 debtor?

22 MS. ECKOLS: Just a few points that we wanted to
23 respond to, Your Honor. First, with respect to the no
24 prejudice to the debtor, this is not a matter of ten or twenty
25 or thirty claims that did not comply with the blocking number

1 requirement. Debtors are still trying to get a handle on the
2 number of claims but right now believe it is definitely north
3 of 500. So that is a significant number; it's not just one or
4 two. And that is going to increase the burden significantly on
5 debtors especially if all the claimants decide to come to court
6 and seek to prove ownership of the securities at issue in some
7 other manner.

8 With respect to August '86 request that the Court
9 allow them to amend their claims, that issue -- the issue today
10 is simply whether omnibus objection number 29 should be
11 granted. No motions have been filed to date to allow
12 amendments to these claims and we do not believe such relief
13 should be considered today.

14 With respect to Aspecta -- Aspecta's argument that
15 they've established that they've had ownership of the security,
16 I guess, from the inception of this Chapter 11 case through the
17 bar date, that is simply incorrect. The attachments to their
18 response are simply two pages of documents that appear to have
19 been created by the Bank of Luxembourg. And, at most, what
20 they show is that as of September 2010, which is after the
21 twenty-ninth omnibus objection was filed, that as of that late
22 date, they appeared to own the securities. Therefore, it does
23 not satisfy the goals of the blocking number requirement. And
24 thus, Your Honor, we ask that omnibus objection 29 as to those
25 three claimants be granted.

1 THE COURT: One more question about the impact of the
2 blocking number. If a blocking number has been obtained and a
3 proof of claim has been filed in reference to a security
4 identified by such blocking number, is it permissible for the
5 claim to be traded or is it, in fact, blocked until such time
6 as a distribution is available from this estate?

7 MS. ECKOLS: Your Honor, I am actually going to allow
8 Mr. Waisman to answer that question.

9 MR. WAISMAN: Your Honor may recall that subsequent to
10 the bar date, there were supplemental procedures that were --

11 THE COURT: I recall.

12 MR. WAISMAN: And part of those procedures were to
13 permit the claims to freely trade.

14 THE COURT: Yes. I recall. So here's where I become
15 perplexed. Is the blocking number which is obtained as a
16 condition to submitting a proof of claim based on Lehman
17 program securities purely designed to facilitate tracking and
18 claim management or is it also designed to limit trading at
19 least up to the point that the proof of claim is filed? Or
20 does it have no impact on trading?

21 MR. WAISMAN: It absolutely had impact on trading.
22 Once somebody obtained a blocking number -- it could have been
23 a day before the program securities bar date or a month prior.
24 The moment they obtained that blocking number, that security
25 could not trade. It was locked. And it was not until a date

1 well past the Lehman program securities bar date that the
2 number became unblocked and was freely tradable. And the
3 issues become even more complex because the bar date wasn't
4 purely to track the individual security but it was also to
5 reconcile duplications with the larger issuances that were held
6 by the banks. And we have obviously inferences where the bank
7 holding the note filed a proof of claim with the blocking
8 number and then the individual holders who called their brokers
9 who called Euroclear and Clearstream also obtained blocking
10 numbers. You have this multiple layer.

11 THE COURT: I'm reminded by your comment that when
12 there was a request jointly made by the debtors and certain
13 creditor constituencies for a modification of the restrictions
14 building to the bar date order to permit trading of Lehman
15 program securities, even though there were no objections lodged
16 to that request, that's my recollection that I did not
17 immediately approve that motion but carried it to another
18 omnibus hearing date out of expressed concern that there might
19 be an impact upon the integrity of the bar date order itself.
20 And I was ultimately satisfied that there would be no impact
21 upon the bar date. And now I find myself at a claims hearing
22 where the integrity of the proof of claim process is at issue
23 as it relates to the blocking number component of the proof of
24 claim. And what I'm still puzzling over, and I think I'd like
25 just a little bit more explanation from debtors' counsel on

1 this, is the actual practical use of the blocking number in
2 tracking claims, reconciling claims and allowing claims
3 particularly in the environment in which these Lehman program
4 securities are now being freely traded.

5 MR. WAISMAN: Your Honor, may I have a brief moment?

6 THE COURT: Sure.

7 (Pause)

8 MR. WAISMAN: Your Honor, Shai Waisman. Your Honor
9 recalls correctly that the debtors came back with a group of
10 interested creditors previously known as the Coalition of the
11 Willing to seek an addendum to the Lehman program securities
12 procedures. Those procedures -- we -- the debtors and, I
13 believe, the committee always thought were part and parcel of
14 the original program securities notice but they were -- there
15 was enough concern that people wanted a supplemental order.
16 Your Honor expressed concern that perhaps the debtors were
17 succumbing to the hew and cry of the street in doing something
18 that would undermine the integrity of the procedures and
19 adjourn the matter. And we came back with an affidavit of a
20 businessperson setting forth that the purpose of the program
21 securities was to provide the debtors comfort that the party
22 filing the proof of claim had actual ownership of the security
23 at the time the claim was filed and at the time the bar date
24 came. It was required to illustrate the integrity of the claim
25 that the party held the claim that it wasn't traded every

1 single day up until the bar date and multiple claims being
2 filed. And given that we were past the program securities bar
3 date and therefore anybody that filed a proof of claim with the
4 blocking number, we knew owned the security on that day and
5 that's the only day that matters for the purpose of
6 establishing the claims. Thereafter, there was no reason to
7 require them to continue to hold the claim. No benefit to us.
8 There should be a free market as the bankruptcy rules suggest
9 there should be in the trading of claims. And the order was
10 meant to facilitate the fact that we were so far removed from
11 the bar date there was going to be no benefit to us from
12 restricting trading any further. Parties could continue to
13 trade because what we needed we had at that point. We had
14 proof that a party that filed the claim owned the security on
15 the day in question.

16 We do not use blocking numbers now to track claims at
17 all. When we go through the 66,000 claims that sit in a pile,
18 we get to a Lehman program securities claim, we verify that
19 there's a blocking number. We do check it against our master
20 list to make sure that it's a real blocking number. And that
21 proves to us that the party that filed the claim owned the
22 security and therefore is the rightful claimant. The next
23 step, of course, is to make sure whether somebody else filed a
24 proof of claim on behalf of that issuance.

25 THE COURT: I hear you although I must say that this

1 adds strength to the argument made by Mr. Friedman that on a
2 scale of one to ten, this is a one. This isn't a ten in terms
3 of technical noncompliance because the blocking number is, in
4 effect, an extra protection designed to make sure that the
5 party who filed the claim with respect to these freely tradable
6 instruments in fact was the owner of the claim at a particular
7 point in time that is relevant for bankruptcy purposes but for
8 no other purpose because the instruments may have traded
9 multiple times already, in some instances, and may continue to
10 trade in the future.

11 Now I have no problem with the free trading of
12 securities. The only problem I'm having right now is whether
13 the significance of the failure to include a blocking number on
14 a proof of claim is so material a failure to comply with the
15 expressed requirements of the proof of claim bar date
16 procedures as to warrant claim disallowance when a party
17 objects. And I'm having some trouble with this right now,
18 particularly, I must tell you in the case -- it kind of goes up
19 in significance, A, B and C. RBC has the strongest position;
20 August '86 Trust has the next strongest position; and Aspecta
21 Assurance has the weakest position, as I see it. But I think
22 Aspecta is simply making an argument well, we didn't do it but
23 we own the security. Here. See this attachment to our
24 response. They clearly didn't comply with the no blocking
25 number problem. But they, in effect, make an argument for the

1 great unwashed that didn't comply at all. That's your
2 floodgates problem, the problem that parties who never obtained
3 a blocking number will come forward and say we have the ability
4 through extrinsic evidence to demonstrate that we, in fact, own
5 the security at the time that we filed the proof of claim. I
6 have a problem with that.

7 But as to anybody else who actually had a blocking
8 number and somehow messed up, I'm having a hard time seeing why
9 this is such a problem for the debtor. And I need to
10 understand a little bit more about why procedurally this
11 creates such a potential hornet's nest of claim administration
12 difficulty down the road.

13 MR. WAISMAN: Your Honor, I'd say a couple things.
14 First of all, there is nothing Your Honor has just said that we
15 disagree with. We have spent a lot of time struggling with
16 these very issues. The obvious statement that the bar date in
17 this case was so unique that it does not fit squarely within
18 the precedent, and I understand Mr. Friedman citing to the
19 legend of case law on amendments, but this case just doesn't
20 fit squarely within those parameters and it is difficult to
21 reconcile.

22 The program securities requirement was very explicit
23 and specific and absolutely necessary. Without it, this case
24 would be a quagmire and we would have no ability to reconcile
25 over 30,000 claims.

1 In many ways the program's security's blocking number
2 is itself the claim. Without it, you're submitting a statement
3 that at some point you own something. But if you don't submit
4 the program security's number it doesn't -- it doesn't comply
5 for the purposes of a bar date in this case. We have, in other
6 circumstances, been to Your Honor with claims issues, claims
7 objections and have agreed with Your Honor that we need to
8 strictly enforce the very specific and very unique requirements
9 of this bar date order because it is such a slippery slope.
10 And the fear here is that we know of here eleven, we already
11 know of 500 more, it's a reconciliation. We haven't been
12 through the lion's share of our claims. The number is
13 certainly to grow of claimants who got the blocking number but
14 simply didn't include, forgot for whatever reason. And as I
15 said before, we are here because that's a slippery slope to --
16 well, they forgot -- I forgot to get it but I can prove to you
17 that I had it, and then we're going to be inundated with
18 thousands upon thousands of claimants coming to this court to
19 prove that they held the security and that they can meet the
20 purpose of the program securities blocking number requirement
21 by extrinsic evidence, even though they didn't supply the
22 number.

23 And when you try to differentiate those two, you come
24 back to there was a requirement, it was to be strictly enforced
25 and people didn't comply. And as Ms. Eckols said, a number of

1 times, there were two requirements; to get the number and to
2 include it. If we start to excuse one people are certainly
3 going to argue you have to excuse the other, and we have a hard
4 time differentiating between those two.

5 THE COURT: I'm not sure I have such a hard time
6 differentiating between those two.

7 MR. WAISMAN: Well, you wear the black robe.

8 THE COURT: That's true. But obviously claimants that
9 do everything perfectly are to be applauded for navigating what
10 is a fairly complex claims process in this case. This is not,
11 by any means, standard issue. But as I understand the purpose
12 to be served by the obtaining and inclusion of a blocking
13 number, it is to establish, in a user-friendly way from the
14 perspective of the debtors, that a particular claimant within
15 the pool of holders of Lehman program securities, in fact was a
16 holder on the relevant date, correct?

17 MR. WAISMAN: That's correct.

18 THE COURT: I think that in the case of RBC capital
19 that there really has been the kind of compliance that fits
20 within the applicable case law that I cited in my omnibus late
21 filed claims decision, in which good faith attempts to comply
22 coupled with confusion can lead to an excuse. And here there
23 was good faith compliance in the sense of obtaining a blocking
24 number and somebody in Minneapolis goofed, they win. Now, they
25 win on particularized facts and I don't think that opens a

1 door.

2 My next question to myself is well does August '86
3 Trust win? And maybe I need to think some more about that
4 after taking a look at the affidavit of Joseph Kelly, which
5 obviously Mr. Kelly, who's a solicitor, thought worthy of my
6 attention. I haven't paid enough attention to it yet and I
7 want to think about it some more.

8 But let's just say, for the sake of discussion, that
9 August '86 Trust wins too, what's the principle that has just
10 been established? It seems to me that the principle is that
11 anybody who has gone to the trouble of getting a blocking
12 number but who has failed, through negligence or administrative
13 error, to include the blocking number but who later provides
14 that blocking number is, in effect, curing the defect in a
15 manner that doesn't take away from the integrity of the bar
16 date order. Nor does it in a material way because I don't
17 imagine there's going to be a huge class, but I could be wrong,
18 of parties who actually obtain the blocking number and then
19 negligently failed to include it.

20 It seems to me that the debtor is still in a position
21 to use the blocking number because the blocking number has been
22 provided and the integrity of the proof of claim, as it relates
23 to Lehman program securities is preserved.

24 The Aspecta case is different. That's the we didn't
25 do it at all problem but we have other means of establishing,

1 in a way that we think should be credible, that we held Lehman
2 program securities at the time that a proof of claim was filed
3 and completely ignored the requirement of including a blocking
4 number. They lose.

5 And I believe that you can draw a line here that says
6 if you have a blocking number you have done everything that you
7 can reasonably do to meet the spirit of the bar date notice as
8 it relates to Lehman program securities, assuming that you
9 have, for good cause, failed to include. That you have reason
10 to establish that there was legitimate confusion or a
11 legitimate failure to comply, not just I willfully held it back
12 because I thought it was a stupid requirement, that's not going
13 to work. But if there was what amounts to good faith efforts
14 to comply with that requirement and you then later provide the
15 number, it seems to me that the blocking number component of
16 this requirement is satisfied.

17 MR. WAISMAN: Your Honor, if I may interject for one
18 moment. As Your Honor is describing this narrow exception, it
19 might be helpful if it relates to entities that timely filed
20 proofs of claim, have obtained a blocking number but for good
21 cause failed to include and later provide it.

22 THE COURT: That's exactly what I'm saying. That
23 can't be a very big class of claimants and if it turns out to
24 be, well, so be it.

25 That's my best effort at walking a tightrope created

1 by these requested exceptions to the blocking number
2 requirement of the bar date notice. I'm not making a ruling
3 yet with respect to the August '86 Trust because I want to take
4 some time to look at the affidavit of Joseph Kelly. But if the
5 August '86 Trust fits within the exception, I've just
6 articulated, then they'll prevail. I'm sorry Aspecta loses.
7 They just didn't get a blocking number and they're out of
8 court.

9 MR. WAISMAN: Thank you, Your Honor. That guidance is
10 very, very helpful as we try to navigate these waters and turn
11 to Your Honor for guidance on the narrow calls.

12 THE COURT: Okay.

13 MR. WAISMAN: Greatly appreciated.

14 MS. ECKOLS: Thank you, Your Honor.

15 MR. FRIEDMAN: Your Honor, I just want to figure out
16 the best mechanics to get an order reflecting your decision
17 with respect to RBC.

18 MR. WAISMAN: I think what we would do is remove it
19 from the proposed -- remove your claim from the proposed order
20 that we hand up today and there's no objection pending to your
21 claim.

22 MR. FRIEDMAN: Okay. We do have an amended claim; we
23 can deal with that by stipulation.

24 MR. WAISMAN: Why don't we speak and take care of it?

25 MR. FRIEDMAN: Thank you very much, Your Honor.

1 THE COURT: Okay.

2 MR. WAISMAN: I'm sorry, Your Honor, just one moment.
3 Thank you.

4 THE COURT: You can feel free to confer.

5 (Pause)

6 MS. ECKOLS: Your Honor, taking up agenda item number
7 12, which is debtor's thirty-ninth omnibus objection to claims,
8 this is seeking to disallow and expunge claims that are
9 duplicative, either exactly or in substance of another claim
10 filed for the same party.

11 There is only one formal response. It was filed on
12 behalf of eight claimants. Hesitate to call it an objection
13 because it states that if our omnibus objection is only seeking
14 to disallow duplicative claims, then it has no objection to us
15 doing so and the debtors are only seeking to disallow and
16 expunge claims that are duplicative by this omni.

17 THE COURT: Everybody in that category appears to be a
18 citizen and resident of Greece.

19 MS. ECKOLS: That is correct.

20 THE COURT: And I read that objection or response or
21 reservation of rights, however we're going to characterize it
22 and it wasn't entirely clear to me whether or not in fact they
23 will have surviving claims.

24 If the answer is that they will have surviving claims,
25 then I have no hesitation in granting the thirty-ninth omnibus